

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TC GLOBAL, INC.,

Plaintiff,

v.

GLOBAL BARISTAS, LLC,

Defendant.

No. C14-0431RSL

B.R. Case No. 12-20254KAO
Adv. Proc. No. 13-01540KAO

DECISION ON APPEAL

This matter comes before the Court on Global Baristas, LLC's appeal from an order of the Honorable Karen A. Overstreet, United States Bankruptcy Judge, interpreting a provision of the Asset Purchase Agreement ("APA") between the parties and the subsequent entry of a stipulated judgment in the amount of \$564,517.71.¹ The Court, acting in an appellate capacity, reviews the bankruptcy court's legal conclusions *de novo* and its factual determinations for clear error. In re Olshan, 356 F.3d 1078, 1083 (9th Cir. 2004). Mixed questions of law and fact are reviewed *de novo*. Banks v. Gill Distribution Centers, Inc., 263 F.3d 862, 867 (9th Cir. 2001).

Having reviewed the memoranda and appendices submitted by the parties, the Court affirms the summary judgment decision and judgment entered by the bankruptcy court.

¹ While Global Baristas retained its right to appeal the issue of whether it had breached the APA, the amount of the judgment was stipulated and is not challenged here.

1 Section 2.6(b) of the APA provides in relevant part:

2 As promptly as practicable after the Closing, but in no event later than thirty (30)
3 days after the Closing, the Buyer shall notify the Seller in writing (the “Post-
4 Closing Statement”) of its determination of any proposed adjustments to the
5 Purchase Price under Sections 2.6(a)(ii)(B), (iii), (iv), (v), (iv) [sic], (vii), and (viii)
6 (if any, the “Buyer Adjustment Amounts”).

7 Judge Overstreet correctly concluded that the provision is unambiguous and required Global
8 Baristas to provide written notice regarding its calculations of each adjustment specified in the
9 contract, at which point TC Global would have an opportunity to respond with its own
10 calculations. See Hearst Commc’ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503 (2005).

11 While Global Baristas could have, in its discretion, “determined” that one or more of the
12 adjustments should be \$0 or even in its favor, it was not at liberty to ignore the clear requirement
13 that it “notify the Seller in writing . . . of its determination” This conclusion is based on the
14 objective and unambiguous manifestations of intent set forth in the contract as a whole, making
15 recourse to extrinsic evidence unnecessary. The fact that Global Baristas may have thought that
16 the word “shall” was discretionary is irrelevant where the words used show otherwise and fully
17 support TC Global’s interpretation of the provision. Brogan & Anensen LLC v. Lamphiear, 165
18 Wn.2d 773, 775 (2009) (although extrinsic evidence will sometimes be necessary “to help the
19 fact finder interpret a contract term and determine the contracting parties’ intent regardless of
20 whether the contract’s terms are ambiguous, . . . the subjective intent of the parties is generally
21 irrelevant if the intent can be determined from the actual words used.”).

22 Because the interpretation of Section 2.6(b) did not turn on extrinsic evidence or
23 require the determination of any factual issues, discovery regarding the subjective intent of the
24 parties or the drafters would have been futile. Judge Overstreet did not abuse her discretion
25 when denying Global Barista’s request for a continuance. See Burlington N. Santa Fe R.R. Co.
26 v. Assiniboine and Sioux Tribes of Fort Peck Reservation, 323 F.3d 767, 774 (9th Cir. 2003)
(affirming trial court’s denial of a Rule 56(d) motion where the proposed discovery would be

1 futile).

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3 For all of the foregoing reasons, the judgment of the bankruptcy court is
4 AFFIRMED.

5 Dated this 21st day of August, 2014.

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7 Robert S. Lasnik
8 United States District Judge
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